
(2012) 02 DEL CK 0422

In the Delhi High Court

Case No : Regular First Appeal (OS) No"s. 39 of 2002 and RFA (OS) 18 of 2003

Air Marshal Satish C. Lal and Another

APPELLANT

Vs

J.J. Singh and Others
 J.J. Singh and Others Vs Air
Marshal Satish C. Lal and Another

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Citation : (2012) 8 AD 416 : (2012) 187 DLT 471

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Vinoo Bhagat, With Mr. Amiet Andley, Mr. Arun K. Sharma in RFA OS Nos. 39/2002 and Mr. Rajiv Bahl in RFAOS 18/2003, for the Appellant; Rajiv Bahl, Advocate in RFA (OS) Nos. 39/2002, Mr. Vinoo Bhagat With Mr. Amiet Andley, Advocate and Mr. Arun K. Sharma, Advocate in RFA(OS) 18/2003, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Briefly stated, the facts leading to filing of the above captioned appeals are that Mr. J.J.Singh filed a suit bearing No. 257/1964 before the Sub-Judge, 1st Class, Delhi seeking specific performance of an Agreement to Sell dated 27.03.1963, pleading therein that Mr. Bhagat B. Lal is the owner of the plot bearing No. 20, Block J, Hauz Khas Enclave, New Delhi and the part structure constructed thereon (hereinafter referred to as the "Suit Property"). On 27.03.1963 an Agreement to Sell was executed between J.J. Singh and Bhagat B. Lal where-under Bhagat B. Lal, claiming to be the sole and absolute owner of the suit property agreed to sell the same to J.J. Singh for a consideration of Rs. 2,05,000/- (Rupees Two Lakhs Five Thousand Only), out of which Rs. 10,000/- (Rupees Ten Thousand Only) was paid to Bhagat B. Lal by J.J. Singh as part sale consideration when the agreement was executed. It was agreed between the parties that the sale deed shall be executed by Bhagat B. Lal in favor of J.J. Singh on or before 30th April, 1963 and that the balance sale consideration shall be simultaneously paid by J.J. Singh. When Bhagat B. Lal did not come forward

to execute the sale deed on 25.04.1963 J.J. Singh got issued a legal notice to Bhagat B. Lal calling upon him to honour the Agreement to Sell dated 27.03.1963 and execute the necessary sale deed after receiving the balance sale consideration at the earliest. In response to the said legal notice, Mr. Bhagat B. Lal sent a reply dated 27.04.1963 to J.J. Singh wherein he stated that when he executed the Agreement to Sell he i.e. Bhagat B. Lal was under a bona-fide impression that he was the sole and absolute owner of the suit property, however subsequently when he visited his lawyers' office to finalize the sale deed he was informed by his lawyer that the suit property belongs to the joint Hindu family consisting of Hagar B. Lal, his wife, son and grand-son, for the reason, the same was acquired from out of the joint family funds. It was further stated in the said reply that since Bhagat B. Lal is not the sole and absolute owner of the suit property he is not in a position to honour the Agreement to Sell dated 27.03.1963 and that he was ready to refund the earnest money in sum of Rs. 10,000/- and in addition pay a sum of Rs. 2,000/- by way of compensation to Mr. J.J. Singh. He further pleaded that the story put forward by Bhagat B. Lal in the reply dated 27.04.1963 is a concocted story spun by him to wriggle out of the Agreement to Sell dated 27.03.1963. He pleaded that having represented to J.J. Singh that he i.e. Bhagat B. Lal is the sole and absolute owner of the suit property as recorded in the Agreement to Sell dated 27.03.1963, Bhagat B. Lal is estopped from taking a contrary stand.

2. In the written statement filed by Bhagat B. Lal he admitted having executed the Agreement to Sell dated 27.03.1963 as also having received Rs. 10,000/- from J.J. Singh towards part sale consideration for sale of the suit property. On merits, he reiterated the stand taken by him in the reply dated 27.04.1963 to the legal notice sent by J.J. Singh on 25.04.1963.

3. On the basis of the pleadings of the parties, following issues were settled by the learned Sub-Judge, 1st Class, Delhi:-

1. Whether the plaintiff was not ready and willing to perform his part of the contract? O.P.D.

2. Whether the property in dispute is the Joint Hindu Family property of the defendant and his sons etc. If so its effect? O.P.D.

3. Whether the defendant is not stopped from taking up this plea covered by issue No. 2? O.P.D.

4. Whether the agreement to sell was cancelled by the parties by mutual consent, if so when and on what terms? O.P.D.

5. Whether the plaintiff is entitled to recover damages, if so what amount? O.P.P.

6. If issue No. 5 is proved, whether the plttf. is entitled to recover damages without paying the court fee? O.P.P.

7. Relief.

4. The evidence adduced by J.J. Singh centered around the fact that he was always ready and willing to perform his part of the obligations under the Agreement to Sell dated 27.03.1963 and that it was Bhagat B. Lal who breached the Agreement by not executing the sale deed in respect of the suit property within the prescribed period. As regards Bhagat B. Lal, the evidence adduced by him centered around the fact that the suit property was acquired from the funds belonging to a Joint Hindu Family consisting of himself, his son Satish C. Lal and grand-son Sanjiv Lal.

5. Vide judgment and decree dated 10.06.1965, the learned Sub-Judge decreed the suit and directed specific performance of the Agreement to Sell dated 27.03.1963. Briefly stated, the reasoning of the learned Sub-Judge is that:- (i) J.J. Singh was always ready and willing to perform his part of obligations under the Agreement to Sell dated 27.03.1963 and it was Bhagat B. Lal who breached the Agreement by not executing the sale deed; (ii) the suit property is the property of a Joint Hindu family consisting of Bhagat B. Lal, his son Satish C. Lal and grand-son Sanjiv Lal for the reason same was acquired from out of the sale proceeds of Bhakat Niwas, an ancestral property which fell to the share of Bhagat B. Lal when his father effected partition; (iii) being Karta of the aforesaid family, Bhagat B. Lal was legally competent to enter into a contract for sale of the properties owned by the family including the suit property; and (iv) Bhagat B. Lal is estopped from contending that he is not the sole and absolute owner of the suit property, for the reason, on the basis of belief that the representation made to him by Bhagat B. Lal that he is the sole and absolute owner of the suit property is true J.J. Singh acted to his detriment by paying part sale consideration in sum of Rs. 10,000/- to Bhagat B. Lal.

6. Aggrieved by the aforesaid judgment and decree dated 10.06.1965 passed by the learned Sub-Judge, Bhagat B. Lal filed an appeal bearing RFA No. 170-D/19765 u/s 96 of the CPC before a Division Bench of this Court. During pendency of the said appeal, Bhagat B. Lal expired and thus his legal representatives were brought on record to prosecute the said appeal. Additionally, aggrieved by the finding returned by the learned Sub-Judge in the judgment and decree dated 10.06.1965 that the suit property is the property of a Joint Hindu Family consisting of Bhagat B. Lal, his son Satish C. Lal and grandson Sanjiv Lal for the reason same was got constructed from the sale proceeds of Bhakt Niwas which was the property of the said family J.J. Singh filed cross-objections assailing the correctness of the said finding.

7. The aforesaid appeal and cross-objections came to be decided by a Bench comprising Prakash Narain, J. and Avadh Behari Rohtagi, J. While both the Judges came to the conclusion that the learned Trial Court had rightly held that J.J. Singh was always ready and willing to perform his part of obligations under the Agreement to Sell dated 27.03.1963, there was difference of opinion between the Judges on certain issues.

8. Whereas Prakash Narain J. held that:- (i) where a mistake of law is pleaded

the same cannot be countered by invoking the doctrines of estoppel or equity and thus Bhagat B. Lal was not estopped from contending that he is not the sole and absolute owner of the suit property. He held that the property was a property of the Joint Hindu Family and that Bhagat B. Lal was made aware thereof when he went to his counsel for sale deed to be drafted. He further held that a Karta of a Joint Hindu Family has no right to dispose of the property owned by the family without the concurrence of the other co-parceners except in case of legal necessity and in any case in view of Section 11(2) of the Specific Relief Act the agreement could not be enforced. Prakash Narain, J. accordingly allowed the appeal filed by Bhagat B. Lal and dismissed the cross-objections filed by J.J. Singh.

9. On the other hand, Avadh Behari Rohtagi J. held that where an agreement to sell is executed by the proposed vendor representing himself to be the absolute owner of the property, justice and reason requires that the court should refuse to look into the contrary plea taken by the proposed vendor in a suit for specific performance filed by the proposed purchaser and that a proposed vendor in a suit for specific performance filed by the prospective purchaser should be compelled to convey the property, if the purchaser chooses to accept such title as the vendor had in the property and the fact that the title which the purchaser may acquire in the property is defeasible by a third party was not a ground to refuse specific performance. (Be it noted here that Avadh Behari Rohtagi J. did not express an opinion on the issue whether the suit property is the property of the Joint Hindu Family comprising Bhagat B. Lal, his son Satish C. Lal and grandson Sanjiv Lal). Thus, Avadh Behari Rohatgi, J. dismissed the appeal filed by Bhagat B. Lal and held the cross objections filed by J.J. Singh to be not maintainable.

10. In view of the difference of opinion between Prakash Narain, J. and Avadh Behari Rohtagi, J. following 4 questions were referred by the Bench to a third Judge and the matter was placed before V.S. Deshpande J. for his opinion:-

1. What is the orbit of the purchaser's suit.
2. Whether the property in suit is the joint family property as pleaded.
3. Whether it is open to the vendor to plead partial want of title in the subject matter of the sale as a bar to the relief of specific performance of the agreement to sell" Or, to put it in other words, is it open to the vendor to plead that he is not the absolute owner of the property and joint owners/co-owners are not willing to join him in the sale.
4. What is the legal effect of an express stipulation in the contract of sale that the vendor is the absolute owner of the property agreed to be sold.

11. Vide judgment dated 19.02.1979, V.S. Deshpande J. held as under: -

QUESTION (1):....The plaintiff is the dominis litis. He has, therefore, the choice of limiting the scope of his suit either to the execution of the contract alone only

against the executants or to broaden the scope by making other persons as parties to the suit either with a view to bind them to the contract or to claim partition against them. He cannot be compelled to choose either of the courses by the defendant. The suit by the purchaser before me was limited to the execution of the contract by the vendor with the consequential reliefs of possession and damages. Its scope did not go beyond the liability of the vendor. The other members of the joint family, if any, were neither necessary nor proper parties. For the same reason the vendor could not raise the pleas which they could raise, namely that not only the vendor but they were also the joint owners of the property. For the same reason the trial court could not inquire into the plea by the vendor that he was only one of the joint owners of the property....All that the purchaser asked the vendor to do was to pass him the title that was guaranteed by the vendor to the purchaser in the agreement. The purchaser did not and could not ask the vendor to ensure that interests, if any, of any other persons in the property should also pass to the purchaser on the performance of the contract by the executant. The purchaser could have sought to bind the other joint or co-owners only if he had made them parties and alleged the reasons why they are bound by the contract though they had not executed it. Since the vendor did not choose to broaden the scope of his suit the vendor or his legal representatives could not compel him to do so.

....For the same reason they would not be bound by the decree which would be passed against them in their capacity as legal representatives of the vendor in respect of their own rights not derived from the vendor, if any, in the suit. The benefit of Order XXI Rules 97 and 99 would, therefore, be available to them if and when the decree based on contract and restricted to the rights of the vendor in the property is tried to be executed against them.....

QUESTION (2)

The trial court has found that the vendor had Rs. 43,000/- as the sale proceeds of property received on partition by him from his father. The said property in the hands of the vendor became ancestral property in respect of the son of the vendor. The finding of the trial court upheld by Prakash Narain J. is that the vendor utilized these joint family funds in the construction of the house. Avadh Behari J. has not given any finding on this question, but said that the scope of the suit does not permit the court to enquire into this at all. In my view it is only if the answers to questions (3) and (4) are in favor of the respondent purchaser that question would become unnecessary for the decision of the suit and the appeal. The logical order of the question and the finding is this:

- (i) The scope of the suit is restricted to the contract and the parties to the contract and the pleas which the parties can take as arising only out of the contract.
- (ii) The deceased vendor was, therefore, estopped from showing that the representation of title made by him in the contract was incorrect.

(iii) I agree with the trial court and Avadh Behari J. that the deceased vendor was so estopped and that the appellants as his legal representatives are also bound by the estoppels.

(iv) If an appeal to the Supreme Court it is held that the deceased vendor was not so estopped, then it would be necessary to consider the defence raised by the vendor and if it so considered then the finding that the property which was the subject matter of the agreement was joint Hindu Family property would be relevant.

Therefore, I regard question No. (2) as only a contingent question which will arise only if the plea of estoppel raised by the respondent is negative. In that contingency I agree with the trial court and Prakash Narain J. that the suit property was joint Hindu Family property. Since question (2) does not arise till the plea of estoppels is negated in a further appeal by the Supreme Court the finding as to the suit property being a joint Hindu Family property shall not be taken to have been given in this, suit and the appeal.....

QUESTIONS (3) & (4)

....For the above reasons my answers to questions (3) and (4) are that it is not open to the vendor to plead partial want of title in the subject matter of the sale as a bar to the relief of specific performance of the agreement to sell. In other words he cannot say that he is not the absolute owner of the property and that the joint owners/co-owners are not willing to join him in the same. Such a plea could be available to him only if the plaintiff had chosen to broaden the ambit of his suit by joining the other joint or co-owners as parties seeking them to be bound by the decree in the suit. The legal effect of the express stipulation in the contract of sale that the vendor is the absolute owner of the property agreed to be sold is that the vendor is estopped from showing that the property is joint Hindu Family property.

SUMMARY OF ANSWERS

(1) The suit of the purchaser is restricted to the contract and title of the executants of the contract as stated in the contract.

(2) The house built upon the plot is joint family property as joint family funds were used in its construction. This finding is only contingent. It will not be res judicata. It will be invoked only if the plea of estoppels is negated in any further appeal against the judgment in this appeal.

(3) The vendor is estopped from pleading partial want of title in the subject matter. The other joint owners or co-owners are not concerned with this suit.

(4) The effect of the representation of title made in the sale deed by the vendor is that the vendor is estopped from showing that the said representation is incorrect or untrue.

The case is referred back to the Division Bench for decision in accordance with

the above answers.

(Emphasis Supplied)

12. In view of the aforesaid opinion expressed by V.S. Deshpande J., vide order dated 24.07.1979, the Division Bench dismissed the appeal filed by Bhagat B. Lal.

13. Leave to appeal being granted to the legal representatives of Bhagat B. Lal to challenge the order dated 24.07.1979, final verdict eluded the parties on merits before the Supreme Court since the Civil Appeal got dismissed in default and was not restored.

14. In the year 1979 Satish C. Lal and Sanjiv Lal, son and grand-son of Bhagat B. Lal respectively, filed a suit on the Original Side of this Court seeking a decree of declaration that the agreement to sell dated 27.03.1963 and the judgment and decree dated 10.06.1965 granting specific performance of the Agreement to Sell dated 27.03.1963 in favour of J.J. Singh be declared null and void. In the alternative, it was prayed that a decree be passed declaring that the share of Satish C. Lal and Sanjiv Lal in the suit property is not affected by the decree dated 10.06.1965 passed by the learned Sub-Judge in Suit No. 257/1964 and affirmed by a Division Bench of this Court in RFA No. 170-D/1964. In a nutshell, it was pleaded therein that the said Agreement and decree is not binding upon Satish C. Lal and Sanjiv Lal for the reason the suit property was acquired from out of the funds of the Joint Hindu Family comprising Bhagat B. Lal (Karta of the family), his son Satish C. Lal and grand-son Sanjiv Lal. It was pleaded that the Karta of a Joint Hindu Undivided Family has no right to dispose of the property owned by a Joint Hindu Family without the concurrence of the other co-parceners except in case of necessity. In order to demonstrate that the suit property was a joint family property, it was pleaded that Dr. Umrao Raja Lal, father of Bhagat B. Lal and his three brothers namely Jai Behari Lal, Shri Krishan Dass and Guru D.Lal inherited certain properties from their father Maharaja Lal. He had also acquired certain properties from out of his own funds. On 15.04.1952, Dr. Umrao Raja Lal executed a Deed of Partition partitioning the properties including a house known as "Bhakt Niwas" between his four sons. By virtue of the said partition, Dr. Umrao Raja Lal blended his self-acquired properties with the properties owned by his Joint Hindu Family, of which he i.e. Dr. Umrao Raja Lal was a member and his father Maharaja Lal was the Karta. Due to such blending of ancestral and self-acquired properties owned by Dr. Umrao Raja Lal, all the properties mentioned in the Deed of Partition dated 15.04.1952 including the self-acquired properties of Dr. Umrao Raja Lal became ancestral in nature. By virtue of the said partition, Bhagat B. Lal and his brother Guru D.Lal were jointly allotted "Bhakt Niwas" in equal shares and they i.e. Bhagat B. Lal and Guru D. Lal held the same as Karta of their own undivided families, which in case of Bhagat B. Lal consisted of Bhagat B. Lal, his son Satish C. Lal and grand-son Sanjiv Lal. In the year 1954, Bhagat B. Lal purchased the suit property for a sum of Rs. 16,650/-. On or around February 1955 Bhagat B. Lal and his brother Guru D. Lal sold Bhakt Niwas for a sum of Rs. 85,000/-. The half share of the

undivided family of Bhagat B. Lal in the sale proceeds of Bhakt Niwas i.e. Rs. 42,500/- was utilized in the construction of the suit property. Thus, in view of the fact that the suit property was constructed from the funds belonging to the Joint Hindu Family consisting of Bhagat B. Lal, his son Satish C. Lal and grand-son Sanjiv Lal the same becomes the property of the joint family.

15. In the written statement filed, amongst other pleas, it was pleaded by J.J. Singh that Bhakt Niwas was the self-acquired property of Dr. Umrao Raja Lal and did not become ancestral in nature when it came into the hands of Bhagat B. Lal and his brother Guru D. Lal by virtue of a partition effected by Dr. Umrao Raja Lal of the various properties amongst his sons. He denied that the suit property was got constructed from out of the sale proceeds of Bhakt Niwas.

16. On the basis of pleadings of the parties, following issues were settled by the learned Single Judge:-

1. Whether the suit is not maintainable in view of Order 21 Rule 101? OPD
2. Whether the suit property is properly valued for the purposes of court fee and jurisdiction? OPP
3. Whether the property J-20, Haus Khas, New Delhi was or by blending became the property of the Joint Hindu Family, if so, when and to what effect? OPP
4. Whether the property J-20, Hauz Khas, New Delhi is a joint family property of Bhagat B. Lal, S.C. Lal and Sanjiv Lal? OPP
5. If Issue No. 3 and/or 4 are decided in favor of the plaintiffs then is the agreement to sell dated 27th March, 1963 void as it was executed without any legal necessity or benefit to the estate or for payment of antecedent debt? OPP
6. Whether the agreement to sell is not valid or effective in law? OPP
7. Whether Bhagat B. Lal had no power to alienate the property J-20, Hauz Khas, New Delhi? OPP
8. Whether defendant No. 5 had agreed to cancel the agreement to sell dated 27th March, 1963, if so, to what effect? OPP
9. Whether the decree in Suit No. 257/64 is a nullity for any of the reasons alleged in the plaint? OPP
10. Is the defendant No. 5 estopped by record from questioning the findings of the courts in Suit No. 257/64 and RFA 170-D/65 that J-20, Hauz Khas, New Delhi is a Joint Family Property? OPP
11. Is will alleged to be of Bhagat B. Lal legal and effective in law? OPD
12. Whether the plaintiffs are entitled to the injunction prayed for? OPP
13. Relief.

17. Since it was agreed between the parties that the evidence led in the earlier suit i.e. Suit No. 257/1964 would be read in evidence, no further evidence was recorded.

18. Vide impugned judgment and decree dated 23.10.2002, the learned Single Judge has partly decreed the suit filed by Satish C. Lal and Sanjiv Lal. The learned Single Judge has held that the evidence shows that Dr. Umrao Raja Lal inherited certain properties from his father Late Maharaja Lal and blended his personal properties therewith and on 15.04.1952 partitioned the same amongst his four sons. The recital in the Deed of Partition clearly showed that Bhakat Niwas, though acquired by Dr. Umrao Raja Lal from out of his own funds, was transferred by him upon partition to Bhagat B. Lal and Guru D. Lal towards their share in the ancestral properties. Thus, in the hands of Bhagat B. Lal and Guru D. Lal, Bhakat Niwas became ancestral property. Evidence establishes, as held by the learned Single Judge, that the rental income as also the sale proceeds when Bhakat Niwas was sold was first credited in a joint account in the name of Bhagat B. Lal and Guru D. Lal and was then brought, half-and-half into their personal accounts. Money spent on constructing the building on the plot was from out of the said corpus generated from Bhakat Niwas. Holding the property to be belonging to the Joint Hindu Family, learned Single Judge held that the agreement to sell and the decree in question was liable to be enforced towards the half share of Bhagat B. Lal and accordingly the suit was partially decreed and partially disallowed.

19. Aggrieved by the impugned judgment and decree dated 23.10.2002 insofar it has held that the Agreement to Sell dated 27.03.1963 is void to the extent of half share of Satish C. Lal and Sanjiv Lal in the suit property, J.J. Singh has filed RFA No. 18/2003. On the other hand Satish C. Lal and Sanjiv Lal have filed RFA No. 39/2002 assailing the finding returned by the learned Single Judge that the Agreement to Sell dated 27.03.1963 is void only to the extent of half share of Satish C. Lal and Sanjiv Lal in the suit property and that the remaining half share of Bhagat B. Lal in the suit property is required to be transferred in the favor of J.J. Singh.

20. In support of the appeal filed by J.J. Singh, the learned counsel appearing for him advanced following 3 submissions:-

(i) That the finding returned by the learned Single Judge that the suit property was owned by a joint Hindu family consisting of Bhagat B. Lal, his son Satish C. Lal and grandson Sanjiv Lal is wholly illegal.

(ii) That assuming Bhakt Niwas was an ancestral property it assumed the character of a self-acquired property when it came into the hands of Bhagat B. Lal by virtue of the provisions of Section 8 of Hindu Succession Act, 1956. In support of the said submission, learned counsel placed reliance upon the decisions of the Supreme Court reported as Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, and Yudhishter Vs. Ashok Kumar, and

the decision of the Full Bench of Madras High Court reported as The Additional Commissioner of Income tax, Madras-I Vs. P.L. Karuppan Chettiar, .

(iii) That no reasons have been furnished by the learned Single Judge for coming to the conclusion that the Agreement to Sell dated 27.03.1963 is void to the extent of half share of Satish C. Lal and Sanjiv Lal in the suit property, which vitiates the said finding returned by the learned Single Judge.

21. In support of the appeal filed by Satish C. Lal and Sanjiv Lal, the learned counsel appearing for them had contended that the learned Single Judge committed an illegality in holding that the Agreement to Sell dated 27.03.1963 is void only to the extent of half share of Satish C. Lal and Sanjiv Lal and not in its entirety, particularly when no reasons were furnished by the Single Judge for arriving at the said conclusion.

22. As regards the first submission advanced by the learned counsel appearing for J.J. Singh, except for making a bald statement that the finding returned by the learned Single Judge to the effect that the suit property was owned by a Joint Hindu Family comprising Bhagat B. Lal, his son Satish C. Lal and grandson Sanjiv Lal is incorrect, nothing was brought to our notice by the learned counsel which would lead us to upset the said finding. The learned Single Judge has discussed the evidence very meticulously in paras 30 to 33 of the impugned judgment and we concur with the same and thus we do not reproduce the evidence. Indeed, the Partition Deed Ex.D-5 evidences partition of ancestral properties, Ex.D-4, the sale deed executed when Bhakat Niwas was sold has recitals to the effect that the property was treated as a Joint Hindu Family property and this is the reason why Bhagat B. Lal made his son join the sale deed. Statement of Account Ex.D-1 being the joint account with the Mercantile Bank of India shows that the rental income and sale price from Bhakat Niwas was deposited in the said account and was thereafter withdrawn.

23. Pertaining to the second submission urged, we have to note Section 8 of the Hindu Succession Act, 1956 which reads as under:-

The property of a male Hindu dying intestate shall devolve according to the provision of this Chapter:-

- (a) firstly, upon the heirs being the relatives specified in class I of the schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

24. A bare reading of the aforesaid section makes it clear that when a male Hindu dies intestate, his property shall first devolve upon the heirs being the relatives specified in class I of the Schedule appended to the Hindu Succession

Act and to the exclusion of all other heirs. The relatives specified in class II of the Schedule will get a chance of inheritance only if there is no heir of class I, and if there is no heir of any of the two classes, the agnates of the deceased will get the chance and lastly, if there are no agnates, the cognates of the deceased will get the chance of inheritance.

25. Under the Hindu law, the moment a son is born, he gets a share in the ancestral property and becomes part of the coparcenary. Where a Hindu male, under Hindu Law acquires property from his male ancestors, it acquires ancestral character in his hands and where the inheritance was by a son from the father, with the enactment of the Hindu Succession Act 1956, by virtue of Section 8 of the said Act, it becomes clear that in the hands of the son, upon inheritance from the father, the property would be self-acquired. This is the ratio of law which stands expounded in the three decisions relied upon by learned counsel and as noted herein above while recording the second submission urged by learned counsel.

26. In the instant case it has to be kept in mind that Bhagat B. Lal acquired interest in the ancestral properties when partition took place on 15.04.1952 when Section 8 of the Hindu Succession Act 1956 was not even born.

27. The learned Single Judge has accordingly rightly opined that the suit property was ancestral in character. We would be failing not to highlight that even in the earlier litigation the property was held to be ancestral in nature, but decree was passed against Bhagat B. Lal on the strength of estoppel applied against him, but with a clear rider that the same would not bind his son and his grand-son i.e. Satish C. Lal and Sanjiv Lal.

28. What are the consequences when the Karta of a joint Hindu family alienates the property belonging to the said family without there being any legal necessity or any other justification for effecting such alienation or when he so does upon the representation that he is the sole owner of the property" The aforesaid was answered by the Supreme Court in the decision reported as Sushil Kumar and Anr Vs. Ram Prakash and Ors, in the following words:-

Although the power of disposition of joint family property has been conceded to the manager of joint Hindu family for the reasons aforesaid, the law raises no presumption as to the validity of his transactions. His acts could be questioned in the Court of law. The other members of the family have right to have the transaction declared void, if not justified. When an alienation is challenged as being unjustified or illegal it would be for the alienee to prove that there was legal necessity in fact or that he made proper and bona fide enquiry as to the existence of such necessity. It would be for the alienee to prove that he did all that was reasonable to satisfy himself as to the existence of such necessity. If the alienation is found to be unjustified, then it would be declared void. Such alienations would be void except to the extent of manager's share in Madras, Bombay and Central Provinces. The purchaser could get only the manager's

share. But in other provinces, the Opurchaser would not get even that much. The entire alienation would be void. (Mayne"s Hindu Law 11th ed. Para 396).

(Emphasis Supplied)

29. The aforesaid dictum of law was reiterated by the Supreme Court in the decision reported as Subhodkumar and Others Vs. Bhagwant Namdeorao Mehetre and Others, .

30. Thus, save and except the Presidency of Madras, Bombay and Central Provinces, alienation of a Joint Property by a Karta which was found to be unjustified would require the alienation to be set aside in to-to, but in the said three areas the alienation could be enforced limited to the share of the Karta. The Union Territory of Delhi is not a part of either Madras, Bombay or Central Provinces and thus the agreement to sell and the decree in question obtained by J.J. Singh against Bhagat B. Lal cannot be enforced at all and thus the appeal filed by J.J. Singh has to be dismissed and the appeal filed by Satish C. Lal and his son has to be allowed, but before finally passing orders we take on record that when hearing concluded on January 18, 2012, Mr.Vinoo Bhagat, learned senior counsel for Satish C. Lal and his son made a statement that if the impugned decree is set aside, his clients would pay to the respondents of their appeal a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) to buy peace and end litigation and to rectify the unintentional mistake committed by Bhagat B. Lal in representing that he was the sole owner of the property, a representation, which we note he made bona-fide, but retracted when he went to his counsel for sale deed to be drafted and when the counsel told him that the property was ancestral, within a month of the agreement to sell he not only offered to return Rs. 10,000/- received by him as part sale consideration to J.J. Singh but even offered compensation in sum of Rs. 2,000/-, which was not a petty sum in the year 1963. He acted bona-fide by offering to compensate J.J. Singh for the unintentional mistaken representation made by him. It is unfortunate that two families have been embroiled in a litigation spanning 48 years. They are in litigation since the year 1963.

31. RFA(OS) No. 18/2003 is dismissed.

32. RFA(OS) No. 39/2002 is disposed of setting aside the impugned judgment and decree dated 23.10.2002 and the suit filed by the appellants of RFA(OS) No. 39/2002 is decreed as prayed for. Simultaneously, in view of the concession made by learned counsel for the appellants of RFA(OS) No. 39/2002, decree in sum of Rs. 20 lakhs is passed against said appellants and in favour of the respondents in said appeal, which sum, as stated by learned counsel for the appellants shall be paid to the respondents by depositing Rs. 20 lakhs in the name of the Registrar General of this Court within 8 weeks from today; the deposit would be treated as made in the suit and the learned Registrar General would disburse the same to the respondents of RFA(OS) No. 39/2002 in equal shares.

33. Parties shall bear their own costs all throughout.